

# ARTICLE 1: BUSINESS REGISTRATION

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### § 13-1-1 SHORT TITLE.

This article may be cited as the "Business Registration Ordinance."

('74 Code, § 10-14-1) (Ord. 53-1981)

### § 13-1-2 DEFINITIONS.

For the purpose of this article, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**ENGAGING IN BUSINESS.** Persons operating, conducting, doing, carrying on, causing to be carried on, or pursuing any business, profession, occupation, trade, pursuit or activity for the purpose of profit and who are required to obtain a New Mexico Taxpayer Identification Number.

**INITIAL REGISTRATION ADJUSTMENT PERIOD.** A 12-month period of time during which the city may prorate the business registration fee by monthly increments for the purpose of developing a staggered system of business registration.

**MAYOR.** The Mayor or his designated representative.

**PERSON.** Any individual, male or female, estate, trust, receiver, cooperative association, club, corporation, company, firm, partnership, joint venture, syndicate, or other entity engaging in a business, profession, occupation, trade, pursuit or activity.

**PLACE OF BUSINESS.** The premises, whether it be a personal residence, main business location or an outlet, branch or other location thereof, temporary or otherwise, to which the public is expressly or impliedly invited for the purpose of transacting of business. In the event there is no such location, but the business is transacted at the location of the buyer, then the general sales area shall be considered a "Place of business". Unless a construction contractor has at least one permanent location within the city, "Place of business" includes a construction site, located therein.

('74 Code, § 10-14-2) (Ord. 53-1981; Am. Ord. 42-1988; Am. Ord. 60-1993)

### § 13-1-3 IMPOSITION OF FEE.

There is imposed on each place of business located in the city an annual Business Registration Fee of \$35 for each consecutive 12 month period. The fee is imposed pursuant to Section 3-38-3 NMSA 1978 as it now exists or is amended and shall be known as the "Business Registration Fee". In order to operate a more uniform system of business registration, the city may prorate the business registration fee by monthly increments during the initial registration adjustment period. After the initial registration adjustment period, renewals of business registration shall be for a full 12-month period. Other than during the initial registration adjustment period, the business registration fee shall not be prorated for business conducted for a portion of the year.

('74 Code, § 10-14-3) (Ord. 53-1981; Am. Ord. 42-1988; Am. Ord. 60-1993; Am. Ord. 17-1994)

### § 13-1-4 EXEMPTION.

No Business Registration Fee shall be imposed on any business which is licensed under city ordinance or otherwise exempted by law. No Business Registration Fee shall be imposed on any sanctioned and registered athletic official who officiates for any association or organization which regulates any public school activity and whose rules and regulations are

approved by the State Board of Education.

('74 Code, § 10-14-4) (Ord. 53-1981; Am. Ord. 42-1988)

### **§ 13-1-5 APPLICATION TO DO BUSINESS.**

All persons proposing to engage in business within the municipal limits of the city shall apply for and pay a Business Registration Fee for each outlet, branch, location, or Place of Business within the municipal limits of the city prior to engaging in business.

('74 Code, § 10-14-5) (Ord. 53-1981; Am. Ord. 42-1988)

### **§ 13-1-6 RENEWAL.**

Prior to the expiration of the business registration, any person with a place of business in the city and subject to this article shall apply to renew the business registration and shall pay an annual fee of \$35 for each place of business to the City Treasurer's Office.

('74 Code, § 10-14-6) (Ord. 53-1981; Am. Ord. 60-1993; Am. Ord. 17-1994)

### **§ 13-1-7 LATE FEE.**

There shall be imposed upon each delinquent registration fee, a late fee in the amount of \$10 in the event a new business does not pay the registration fee before it commences business or the annual renewal fee is not paid prior to expiration.

('74 Code, § 10-14-7) (Ord. 53-1981; Am. Ord. 42-1988; Am. Ord. 17-1994)

### **§ 13-1-8 APPLICATION.**

(A) Any person filing for issuance or renewal of any business registration shall include in the application his current Taxpayer Identification Number or evidence of application for such current Taxpayer Identification Number as issued by the New Mexico Taxation and Revenue Department and any other information required by the Mayor. Any person who owns or operates a total of four or more rental housing units, regardless of whether the four units are located at the same or different locations, shall provide a certificate(s) from an approved program that the owner and the property manager/agent of a rental housing unit has successfully completed the Crime Free Rental Housing Training described in § 13-1-8(B). Pursuant to § 9-14-3 ROA 1994, the owner or operator of an overnight lodging establishment or who participates in the motel voucher and lease program shall successfully complete the Crime Free Rental Housing Training. The certificate(s) required in this subsection shall be required for both the property owner and the individual(s) primarily responsible for the management of each rental housing property location. If a rental property owner of less than four rental housing units employs a professional management company/ individual, certificate(s) shall only be required for the individual primarily responsible for the management of each rental housing property location. If the owner of a rental housing property or overnight lodging establishment is a corporation or an entity other than a person, the certificate(s) required in this subsection shall be required only for the individual primarily responsible for the management of each rental housing property location(s) or of each overnight lodging establishment. Failure to provide certificate(s) showing successful completion of Crime Free Rental Housing Training shall result in the denial of the business registration.

(B) *Crime Free Rental Housing Training.* The Crime Free Rental Housing Training shall include at least 8 hours of training on the following topics: Crime Free Rental Property and the Role of the Police; Crime Prevention Through Environmental Design; Fair Housing; Premise Liability/Code Compliance; Dealing with Gang Activity and Illegal Narcotics; Landlord/Tenant Laws of New Mexico; and How to Screen Applicants. A certificate for successfully completing the Crime Free Rental Housing Training shall be valid only from programs approved by the Mayor. The Mayor shall approve training programs with content substantially similar to Phase 1 of the City's Crime Free Multi-Housing Training Program, offered by the Albuquerque Police Department.

(C) *Certificate of Completion of the Crime Free Rental Housing Training.* Each certificate of completion of the Crime Free Rental Housing Training Program shall be valid for 2 years. Re-certification, after completing the initial 8 hour training, shall include a 4 hour refresher course. This 4 hour course shall include the following topics: Overview of Crime Free Rental Housing Property, and an Overview and Update on Landlord/Tenant Laws of New Mexico.

(D) *List of Property Owners and Property Managers/Agents.* The Planning Department for the City shall be responsible for compiling and maintaining a list of rental housing properties covered in § 13-1-8(A). This list shall include the name, address, date of birth and phone number for both the property owner and the individual(s) primarily responsible for the management of each rental housing property location. If the owner of a rental housing property is a corporation or another entity other than a person, they must provide the name, address, date of birth and phone number of the President, CEO, Agent, Managing Partner or Principal who is authorized to represent the corporation or entity.

(E) *Fee to Register Property Owner and Property Manager/Agent.* A \$15 fee shall be imposed every year for each location covered by § 13-1-8(A). This fee is due at the time of the business registration application or renewal. Any change of owner, property manager or agent at each location must be submitted in writing to the Planning Department within 60 days of the change taking effect. Upon enactment of this ordinance, a special revenue account will be created to record and report all revenues generated by this fee. Monies collected in this revenue account are dedicated to the Planning Department for hiring an individual(s) whose sole responsibility will be to enter and change the information used to administer and maintain this list.

(F) *Program Evaluation.* After a period of 3 years from the adoption of this ordinance, the City Council will review the current registration process and make any necessary changes or amendments that would enhance the process.

('74 Code, § 10-14-8) (Ord. 53-1981; Am. Ord. 42-1988; Am. Ord. 49-2002; Am. Ord. 34-2004)

### **§ 13-1-9 ZONING NOTIFICATION.**

(A) Upon acceptance of an initial business registration application for a given business, the Mayor shall convey the application to the Zoning Enforcement Officer. Upon its review by the Zoning Enforcement Officer as to legality under Chapter 14, Article 16, Integrated Development Ordinance, of the activity proposed to be conducted at the given address, a statement as to the determination or questions which need to be resolved before a determination can be made shall be appended to the Business Registration Receipt prior to its delivery to the applicant.

(B) Upon issuance of a renewal of a Business Registration Receipt for a new location, the Mayor shall send a copy to the Zoning Enforcement Officer.

(C) All Business Registration Receipts shall prominently display a disclaimer stating the facts that registration with the city is not a license to conduct business within the city and does not constitute a waiver of any requirement or provision contained in any law and that the activity proposed to be conducted at any location should be approved by the City's Zoning Enforcement Officer prior to the conduct of such activity.

('74 Code, § 10-14-9) (Ord. 32-1992; Am. Ord. 2017-025)

### **§ 13-1-10 ENFORCEMENT.**

This article may be enforced by misdemeanor citation to State Metropolitan Court, and appropriate legal or administrative action brought to prevent the conduct of business; restrain, correct, or abate the violation of this article; to prevent the occupancy of a building, structure, or land on which the business is located; or to withhold the issuance of permits or inspections as appropriate. In addition, the Business Registration Fee may be collected by suit in Metropolitan or District Court. The municipality may institute any appropriate action or proceeding as provided for herein any time up to four years after the violation.

('74 Code, § 10-14-10) (Ord. 53-1981; Am. Ord. 42-1988; Am. Ord. 32-1992)

### **§ 13-1-99 PENALTY.**

Any person convicted of a violation of any provision of this article shall be guilty of a misdemeanor and shall be subject to the penalty provisions set forth in § 1-1-99 of this code of ordinances. Each day such violation is committed or permitted to continue shall constitute a separate offense and shall be punishable as such hereunder.

('74 Code, § 10-14-11) (Ord. 53-1981; Am. Ord. 42-1988; Am. Ord. 32-1992)

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**PART 1: BUSINESS SOLICITATIONS**

**§ 13-3-1-1 PURPOSE.**

The purpose of §§ 13-3-1-1 et seq. is to protect the general public, to help control congestion in the streets and sidewalks, and to help insure compliance with Chapter 13, Article 1, Business Registration and the State Gross Receipts Tax.

('74 Code, § 10-10-1) (Ord. 53-1976; Am. Ord. 69-1982; Am. Ord. 58-1989; Am. Ord. 5-1991)

**§ 13-3-1-2 DEFINITIONS.**

For the purpose of §§ 13-3-1-1 et seq., the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**CATEGORY A PERMIT.** A permit which authorizes the holder to solicit on public streets and sidewalks in commercially zoned areas in the city, except in the H-1 Historic Old Town Zone.

**CATEGORY B PERMIT.** A permit which authorizes the holder to solicit at private residences in the city.

**CONDUCTING SOLICITATIONS** or **CONDUCTING BUSINESS SOLICITATIONS.** Carrying on, causing to be carried on, or pursuing any solicitation with the purpose of direct or indirect benefit.

**H-1 HISTORIC OLD TOWN ZONE.** That area so designated on the official zone map.

**MAYOR.** The Mayor or his designated representative.

**PERMIT.** Written authorization from the city to conduct business solicitations.

**PERSON.** An individual desiring to solicit under §§ 13-3-1-1 et seq.

**SIDEWALK.** That portion of the public right-of-way which is primarily devoted to pedestrian use.

**SOLICITATION.** Selling, offering for sale, selling and delivering, bartering, exchanging, peddling or hawking any goods, wares, merchandise, property either real or personal, tangible or intangible, or services, or the making of or personal appointments, attempting to procure or procuring of interviews, or arranging for demonstrations or explanations preliminary to selling, offering for sale, selling and delivering, bartering, exchanging, peddling or hawking of any of the same.

**STREET.** That portion of the public right-of-way which is primarily devoted to vehicular use.

('74 Code, § 10-10-2) (Ord. 53-1976; Am. Ord. 69-1982; Am. Ord. 58-1989; Am. Ord. 5-1991)

### **§ 13-3-1-3 PERMIT REQUIRED.**

It shall be unlawful for any person to conduct any business solicitation in any location, unless such person has in his possession a valid permit issued in accordance with the provisions of §§ 13-3-1-1 et seq. and unless such person is conducting solicitations in a location permitted by §§ 13-3-1-1 et seq.

('74 Code, § 10-10-3) (Ord. 53-1976; Am. Ord. 58-1989; Am. Ord. 5-1991)

### **§ 13-3-1-4 EXEMPTIONS.**

Except as otherwise specifically provided in §§ 13-3-1-1 et seq., said sections shall not apply to:

(A) Solicitations at traditional art shows and fiestas and at special events of citywide interest which are sponsored by civic organizations; provided such solicitations have been authorized by the Mayor. Each such event shall be no more frequent than semiannual and shall last for no more than four consecutive days. The Mayor shall develop an application form and procedures for allowing solicitations at such special events, and may require a deposit for clean up, liability insurance, or other city services.

(B) Sale of vegetables, fruits, meats or other produce raised and sold in unprocessed form by the grower or producer thereof.

(C) Solicitations at private residences in the city by real estate agents, insurance agents or insurance solicitors who have obtained a license from the State Superintendent of Insurance or the New Mexico Real Estate Commission and who carry such license on their person and who exhibit such license to any owner or occupant of any residence upon demand.

(D) Solicitations on any privately owned commercial property in the city.

(E) Solicitations on any property belonging to governmental or political subdivisions of the State of New Mexico and of the United States, except the city.

(F) Solicitations by any natural person of the age of 17 years or under.

(G) Solicitations for public transportation for hire by either horse-drawn or human powered vehicles provided the person performing such services has obtained written authorization from the Mayor for the provision of such services on public street rights-of-way. The Mayor shall develop an application form and procedures for allowing such solicitations and may limit the public street rights-of-way on which said vehicles may operate, the times of operation, and may require liability insurance and set other conditions of operation to ensure compliance with the laws of the state and the ordinances of the city and provide for the general welfare.

(H) Solicitations by any individual or group engaging in a street performance as defined at §12-2-28(C) ROA 1994.

('74 Code, § 10-10-4) (Ord. 53-1976; Am. Ord. 54-1984; Am. Ord. 58-1989; Am. Ord. 5-1991; Am. Ord. 38-2007)

### **§ 13-3-1-5 PERMIT STANDARDS.**

(A) Solicitations shall be conducted in accordance with the provisions of §§ 13-3-1-1 et seq.

(B) No permit holder or his employer shall have been convicted of a crime involving solicitations in the city, the state or the United States within the past ten years.

(C) Permit holders shall show evidence of having paid all local and state taxes due as a result of their business

solicitations.

('74 Code, § 10-10-5) (Ord. 53-1976; Am. Ord. 58-1989; Am. Ord. 5-1991)

### **§ 13-3-1-6 PERMIT APPLICATION.**

Any person desiring a permit pursuant to §§13-3-1-1 et seq. shall file an application with the Mayor upon a form to be provided by the Mayor. Fees as hereinafter set forth in §§ 13-3-1-1 et seq. shall accompany said application. The application shall include, but not be limited to, the following information:

- (A) The name, mailing address, telephone number and social security number of the applicant.
- (B) If the applicant is employed by another person to conduct business solicitation, the name, mailing address and telephone number of this employer.
- (C) The State Gross Receipts Tax identification number and proof that the applicant is in compliance with Chapter 13, Article 1, Business Registration.
- (D) The class of permit applied for, a description of the type of article, merchandise, or food to be offered for sale, and a description of the vending vehicle, cart, or stand to be used, if applicable.
- (E) Two current passport size photographs of the applicant. The photographs shall not be supplied until the applicant has been selected for issuance of the permit.
- (F) The proposed location or locations where the applicant desires to conduct business solicitations.
- (G) A declaration under penalty of perjury that neither the applicant nor his employer, if applicable, has been convicted of a crime involving solicitations in the city, the state or the United States within the past ten years.
- (H) A declaration under penalty of perjury that the applicant is 18 years of age or older.
- (I) A declaration that the applicant, if and when he becomes a permit holder, agrees to indemnify and hold harmless the city, its officers and employees from any and all damages or injury to persons or property proximately caused by the act or neglect of the permit holder or by hazardous or negligent conditions maintained at the solicitations location.

('74 Code, § 10-10-6) (Ord. 53-1976; Am. Ord. 41-1984; Am. Ord. 58-1989; Am. Ord. 5-1991)

### **§ 13-3-1-7 CATEGORY A PERMIT; LOCATIONS PERMITTED.**

Holders of a Category A Permit shall be allowed to solicit in the following locations within the city with the exception of the H-1 Historic Old Town Zone, subject to any rules and regulations adopted by the Mayor:

- (A) On public sidewalks in commercially zoned districts so long as the solicitation does not obstruct or restrict the free use of the sidewalk by pedestrians and so long as the solicitation does not effectively reduce the width of the sidewalk along local or collector streets to less than four feet; and along local or collector streets abutting schools and churches, along arterial streets, to less than six feet; provided, however, that no solicitations shall be permitted on any sidewalk designated as a park by the Mayor.
- (B) On public streets in accordance with applicable provisions of the Traffic Code [set forth in Chapter 8 of this code of ordinances].

('74 Code, § 10-10-7) (Ord. 53-1976; Am. Ord. 85-1989; Am. Ord. 59-1990; Am. Ord. 5-1991)

### **§ 13-3-1-8 CATEGORY B PERMIT; LOCATIONS PERMITTED.**

Holders of a Category B Permit shall be allowed to solicit at private residences within the city subject to any rules and regulations adopted by the Mayor; provided, however, that no person shall solicit at any such premises where the occupant(s) or owner(s) of said premises indicates orally or in writing that he does not desire to have his right of privacy disturbed. For the purposes of this section, it shall be sufficient written indication that one does not desire to have his right of privacy disturbed, if there is placed on such premises in a conspicuous place near the entrance thereof a sign bearing the words "No Trespassing", "No Peddlers," "No Advertisements" or any sign bearing a similar message.

('74 Code, § 10-10-8) (Ord. 53-1976; Am. Ord. 58-1989; Am. Ord. 5-1991)

### **§ 13-3-1-9 PERMIT FEE.**

Upon submitting the application for a permit, the applicant shall pay the Treasurer of the city a nonrefundable fee of \$10.

('74 Code, § 10-10-9) (Ord. 53-1976; Am. Ord. 69-1982; Am. Ord. 58-1989; Am. Ord. 5-1991)

### **§ 13-3-1-10 HOURS OF SOLICITATIONS.**

- (A) Solicitations conducted under a Category A Permit are permitted between the hours of 9:00 a.m. and 9:00 p.m.
- (B) Solicitations conducted under a Category B Permit are permitted between the hours of 9:00 a.m. and sunset.

('74 Code, § 10-10-10) (Ord. 53-1976; Am. Ord. 58-1989; Am. Ord. 5-1991)



### **§ 13-3-1-11 AUTHORIZATION OR DENIAL OF PERMIT.**

The Mayor shall, within ten calendar days of receipt of the application for permit, grant or deny the permit. If the Mayor affirmatively determines, upon the basis of a review of the application, that the requirements have been met, he shall grant the permit. If the Mayor determines, upon the basis of a review of the application, that any of the requirements have not been met, the Mayor shall notify the applicant that the application for the permit has been denied and shall state the reasons upon which the denial is based. The denial of a permit may be appealed to a city Hearing Officer by filing a written notice of appeal with the City Clerk within ten days of the denial's issuance; the Hearing Officer shall, within 14 days of the filing of the notice of appeal, hold a hearing and recommend findings and action to the Mayor; the Mayor's final action shall be within five days of the receipt of the recommended findings and action.

('74 Code, § 10-10-11) (Ord. 53-1976; Am. Ord. 58-1989; Am. Ord. 5-1991; Am. Ord. 20-1992)

### **§ 13-3-1-12 VISIBILITY OF PERMIT; NONTRANSFERABILITY; DURATION; RENEWALS; MAXIMUM NUMBER OF PERMITS HELD.**

(A) Any permit issued pursuant to §§13-3-1-1 et seq. shall include the name, address and a photograph of the permit holder. Permits must be carried by the permit holder at any time when he is conducting business solicitations and must be shown to the public upon request.

(B) All permits shall be nontransferable.

(C) Permits shall be valid for a maximum of one year.

(D) Permits shall not automatically be renewed except by direction of the Mayor. Persons who hold permits may submit applications for additional one year terms.

(E) No person may hold or be issued more than one valid permit in each permit category in any one year.

('74 Code, § 10-10-12) (Ord. 53-1976; Am. Ord. 58-1989; Am. Ord. 5-1991)

### **§ 13-3-1-13 RESPONSIBILITY FOR CLEANUP.**

Permit holders shall maintain their solicitations location in a clean and hazard free condition; failure to so maintain and failure to clean the solicitations location of waste shall be cause for revocation or suspension of the permit.

('74 Code, § 10-10-14) (Ord. 53-1976; Am. Ord. 58-1989; Am. Ord. 5-1991)

### **§ 13-3-1-14 PERMITS NOT ENDORSEMENT.**

Permits under §§ 13-3-1-1 et seq. shall not be deemed to constitute endorsement by the city of any business solicitations so registered and no person shall intentionally claim or infer, directly or indirectly any such endorsement by reason of its permit.

('74 Code, § 10-10-15) (Ord. 53-1976; Am. Ord. 58-1989; Am. Ord. 5-1991)

### **§ 13-3-1-15 ADMINISTRATION AND APPLICABILITY OF OTHER LAWS.**

The Mayor may adopt such rules and regulations as necessary for the safe and equitable administration of §§13-3-1-1 et seq. The business solicitations permit does not constitute a waiver of any requirement or provision contained in any ordinance of the city or state or Federal law.

('74 Code, § 10-10-13) (Ord. 53-1976; Am. Ord. 58-1989; Am. Ord. 5-1991; Am. Ord. 20-1992)

### **§ 13-3-1-98 VIOLATIONS; SUSPENSIONS AND REVOCATION OF PERMIT; HEARING.**

(A) If the Mayor believes that a person has:

(1) Violated any provision of §13-3-1-1 et seq. or of regulations applicable to permit holders;

(2) Made fraudulent, misrepresentative, or false statements in the application for the permit; or

(3) Conducted business solicitations in an unlawful manner or in such a way as to constitute a menace to the health or safety of the public; the Mayor shall give the permit holder written notice by certified mail, return receipt requested, that the Mayor intends to proceed to suspend or revoke the permit unless the permit holder requests a hearing. Such request shall be made in writing and filed in the office of the City Clerk within 14 calendar days from the day that the permit holder receives the notice of the proposed action. The notice shall contain a statement of the facts upon which the Mayor has acted. A suspension of a permit shall not exceed 90 calendar days.

(B) If a permit holder fails to request a hearing pursuant to division (A) above, the Mayor shall proceed to suspend or revoke the permit. The written determination by the Mayor to suspend or revoke the permit shall be filed in the office of the City Clerk and sent by certified mail, return receipt requested, to the permit holder.

(C) When a hearing is requested pursuant to division (A) above, the Mayor shall send written notice by certified mail, return receipt requested, to the permit holder of the time and place of the hearing. The hearing shall be held no sooner than five calendar days nor later than 60 calendar days after the permit holder receives notice of the hearing unless the permit

holder agrees to an extended time or the Mayor continues the hearing. At the hearing, the permit holder shall have the right to present evidence as to the alleged facts upon which the Mayor based the determination to suspend or revoke the permit and any other facts which may aid the Mayor in determining whether §§ 13-3-1-1 et seq. has been violated. If, after such hearing, the Mayor finds that any provision of §§ 13-3-1-1 et seq. has been violated, he may suspend or revoke the permit and cause to be filed within ten calendar days after the hearing, in the office of the City Clerk for public inspection, and served upon the permit holder and all interested parties participating in the hearing, a written statement of the facts upon which such finding is based. If after such hearing, the Mayor finds that the ordinance has not been violated, he shall, within ten calendar days after the hearing, give to the permit holder a written statement that no violation was found to have been committed.

(D) Any person whose permit has been revoked shall not be permitted to apply for another permit for one year after the filing of the written statement revoking the permit.

('74 Code, § 10-10-16) (Ord. 53-1976; Am. Ord. 69-1982; Am. Ord. 58-1989; Am. Ord. 5-1991)

### **§ 13-3-1-99 PENALTY.**

Any person violating any of the provisions of §§ 13-3-1-1 et seq. shall be deemed guilty of a misdemeanor and upon conviction thereof shall be subject to the penalty provisions set forth in § 1-1-99 of this code of ordinances. Each day of violation shall be considered a separate offense.

('74 Code, § 10-10-17) (Ord. 53-1976; Am. Ord. 58-1989; Am. Ord. 5-1991)

## **PART 2: OLD TOWN SOLICITATIONS**

### **§ 13-3-2-1 SHORT TITLE.**

Sections 13-3-2-1 et seq. shall be known and may be cited as the "Old Town Solicitations Ordinance."

('74 Code, § 10-2-1) (Ord. 20-1991)

### **§ 13-3-2-2 AUTHORITY.**

The City Council, pursuant to the Charter of the City of Albuquerque and Article X, Section 6 of the Constitution of New Mexico, hereby enacts §§ 13-3-2-1 et seq. as authorized by such provisions.

('74 Code, § 10-2-2) (Ord. 20-1991)

### **§ 13-3-2-3 LEGISLATIVE INTENT.**

(A) *Findings.*

(1) The Old Town HPO 5 is one of the nation's first locally designated historic districts.

(2) The designation of the Old Town HPO 5 as a historic area is an effort to preserve, protect and promote the educational, cultural and artistic interests of the Old Town HPO 5 and the general public.

(3) Regulating solicitations in the Old Town HPO 5 is necessary in order to foster the educational, cultural and artistic interests of the Old Town HPO 5 and the general public.

(4) Limiting solicitations in the Old Town HPO 5 to the Old Town Portal Market and providing that only handcrafted items may be sold is necessary in order to foster the educational, cultural and artistic interests of the Old Town HPO 5 and the general public.

(B) *Purpose.* The purpose of §§ 13-3-2-1 et seq. is to preserve, protect and promote the educational, cultural and artistic interests of the Old Town HPO 5 and the general public, control congestion, and protect the health and welfare of the citizens of the city.

('74 Code, § 10-2-3) (Ord. 20-1991; Am. Ord. 2019-023)

### **§ 13-3-2-4 DEFINITIONS.**

For the purpose of §§ 13-3-2-1 et seq., the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**BOARD.** The Old Town Portal Market Advisory Board created by and established pursuant to §§13-3-2-1 et seq.

**CRAFT UNIT.** An applicant and the individuals specified in the permit application. A craft unit may not exceed three persons.

**HANDCRAFTED.** Production by one person by the use of hands and hand tools displaying a degree of manual skill or dexterity and not primarily mass produced or machine made.

**HANDCRAFTED ITEMS.** Those objects which are produced by the use of hands and hand tools, displaying a degree of manual skill or dexterity, and include, but are not limited to, beadwork, basketry, pottery, silver, turquoise and shell jewelry, handwoven cloth and blankets and objects made therefrom; leather goods and wood carving. Such items may be



comprised of new materials or machine-made parts or elements, provided that no object which is primarily mass produced or machine-made shall be considered to be handcrafted.

**MACHINE-MADE.** The producing or reproducing of an item in mass production by mechanically stamping, casting, blanking and weaving, except mechanically pressed silver beads.

**MAKER'S MARK.** An individual craftperson's mark or craft unit's mark, used to verify and indicate creation of an object by that person or unit.

**MAYOR.** The Mayor or the Mayor's designated representative.

**OLD TOWN HPO 5.** That area so designated on the city's official zone map.

**OLD TOWN PORTAL MANAGER.** The administrator of the provisions of §§13-3-2-1 et seq. whose general duties include daily program maintenance, record keeping, site visits, quality control, policy planning and acting as the liaison to the Old Town Portal Market Advisory Board. The Old Town Portal Manager shall be an employee of the city.

**OLD TOWN PORTAL MARKET.** That portion of the public right-of-way set aside in the Old Town HPO 5 where vendors may solicit in accordance with §§ 13-3-2-1 et seq.

**OLD TOWN SOLICITATIONS PERMIT.** Written authorization from the city to conduct solicitations within the allowed area of the Old Town HPO 5.

**PERMIT.** The Old Town Solicitations Permit.

**PERSON.** An individual.

**SIDEWALK.** That portion of the public right-of-way which is primarily devoted to pedestrian use.

**SOLICIT, SOLICITING and SOLICITATION.** Selling, offering for sale, bartering, exchanging, peddling or hawking any goods, wares, merchandise, property either real or personal, tangible or intangible, or services, or the making of personal appointments, attempting to procure or the procuring of interviews, or arranging for demonstrations or explanations preliminary to selling, offering for sale, selling and delivering, bartering, exchanging, peddling, or hawking of any of the same.

**SPECIAL EVENT.** An art show, fiesta or other event of city-wide interest which is sponsored or authorized by the city or declared to be a special event by the Mayor.

**STREET.** That portion of the public right-of-way which is primarily devoted to vehicular use.

**VENDOR.** A person over the age of 18 holding a valid Old Town Solicitations Permit to solicit within the allowed area of the Old Town HPO 5.

('74 Code, § 10-2-4) (Ord. 20-1991; Am. Ord. 2019-023)

### **§ 13-3-2-5 PERMIT REQUIRED.**

Only those persons holding a valid Old Town Solicitations Permit issued by the Mayor may solicit in the Old Town HPO 5 and then only in accordance with §§ 13-3-2-1 et seq.

('74 Code, § 10-2-5) (Ord. 20-1991; Am. Ord. 2019-023)

### **§ 13-3-2-6 EXEMPTIONS.**

Except as otherwise specifically provided in §§13-3-2-1 et seq. and subject to all other pertinent ordinances, §§13-3-2-1 et seq. shall not apply to:

(A) Solicitations at traditional art shows and fiestas and at special events of city-wide interest which are sponsored by civic organizations, provided such solicitations have been authorized by the Mayor. Each such event shall be no more frequent than semi-annual and shall last for no more than four consecutive days. The Mayor shall develop an application form and procedures for allowing solicitations at such special events, and may require a deposit for clean up, liability insurance, or other city services.

(B) Solicitations made to residents at their residences, such solicitation being covered by the Business Solicitations Ordinance.

(C) Solicitations in any privately owned commercial property in the Old Town HPO 5.

(D) Solicitations for public transportation for hire by either horse-drawn or human powered vehicles provided the person performing such services has obtained written authorization from the Mayor for the provision of such services on public street rights-of-way. The Mayor shall develop an application form and procedures for allowing such solicitations and may limit the public street rights-of-way on which said vehicles may operate, the times of operations, and may require liability insurance and set other conditions of operation to ensure compliance with the laws of the state, the ordinances of the city and provide for the general welfare.

(E) Solicitations by any individual or group engaging in a street performance as defined at §12-2-28(C) ROA 1994. Exception: This exemption from the requirement to have a permit from the Mayor shall not apply if the street performance

occurs in the Old Town Plaza Park or the streets immediately surrounding the Old Town Plaza including the sidewalks on both sides of the streets and the sidewalk occupied by the Old Town Portal Market, whether or not vendors are present.

('74 Code, § 10-2-6) (Ord. 20-1991; Am. Ord. 38-2007; Am. Ord. 2019-023)

### **§ 13-3-2-7 OLD TOWN PORTAL MARKET ADVISORY BOARD.**

(A) *Creation.* There is hereby created an Old Town Portal Market Advisory Board of the city.

(B) *Membership.* The Board shall be composed of five members appointed by the Mayor, two of whom shall be representatives of the merchants or property owners in the Old Town HPO 5 who are not vendors regulated pursuant to §§ 13-3-2-1 et seq., two of whom shall be representatives of vendors regulated under §§ 13-3-2-1 et seq. and one at-large member.

(C) *Terms, Vacancies, Member Removal.*

(1) The members shall be appointed and otherwise regulated as set forth in §§ 2-6-1-1 et seq. of this code of ordinances.

(2) The vendors and the merchants or property owners shall recommend members within their respective categories to the Mayor.

(D) *Duties, Responsibilities and Powers.*

(1) The Board shall advise the Mayor and City Council regarding:

(a) Rules and regulations for the safe and equitable administration of §§ 13-3-2-1 et seq.

(b) Policies regulating the vendors and the equitable issuance of permits issued pursuant to §§ 13-3-2-1 et seq.

(c) The Board's recommendations are not binding on the Mayor.

(2) The Board shall make a semi-annual report to the Mayor and City Council which shall review the operation of vendors permitted under §§ 13-3-2-1 et seq. and recommend amendments to policies and procedures of §§ 13-3-2-1 et seq.

(3) The Board should review the policy of solicitations in the Old Town HPO 5 by conducting at least one public meeting for such purpose, annually; should advise on policy and planning; and should promote communication and collaboration among parties affected by §§ 13-3-2-1 et seq.

(E) The Old Town Portal Manager shall be the city staff assigned to the Board.

('74 Code, § 10-2-7) (Ord. 20-1991; Am. Ord. 2019-023)

### **§ 13-3-2-8 PERMIT STANDARDS.**

(A) Solicitations shall be conducted in accordance with the provisions of §§ 13-3-2-1 et seq.

(B) Solicitations shall only involve items which are hand-crafted by the vendor or vendor's craft unit. The Mayor may promulgate rules on how members of a craft unit may participate in hand crafting items.

(C) No more than 50 Old Town Solicitations Permits, which allow soliciting in the Old Town HPO 5, shall be issued. In the event that there are more than 50 applications for Old Town Solicitations Permits, only 50 Old Town Solicitations Permits shall be granted by such methods as may be established by regulation of the Mayor that will insure a fair and equitable granting of permits.

(D) Individuals who are seeking a permit as a craft unit may submit an application only in connection with one craft unit.

(E) All members of a craft unit shall be capable of handcrafting a handcrafted item produced by the craft unit for sale pursuant to this ordinance.

(F) Persons who have had a permit revoked for violating the provisions of §§ 13-3-2-1 et seq. relative to the production and origin of items sold shall not be issued another Old Town Solicitations Permit for a period of ten years from the date of such revocation.

(G) Vendors shall show evidence of having paid all local and state taxes due as a result of their solicitations.

('74 Code, § 10-2-8) (Ord. 20-1991; Am. Ord. 36-1993; Am. Ord. 2019-023)

### **§ 13-3-2-9 PERMIT APPLICATION.**

Any person or craft unit desiring a permit pursuant to §§ 13-3-2-1 et seq. shall file an application with the Mayor upon a form to be provided by the Mayor. If a permit is issued, members of the craft unit may be deleted during the permit period by giving the Mayor prior written notice of the changes, provided at no time shall the craft unit exceed the maximum of three individuals. Fees as set forth in §§ 13-3-2-1 et seq. shall accompany the application. The application shall include, but not be limited to, the following information:

(A) The name, mailing address, telephone number and social security number of the applicant and any members of the applicant's craft unit who request authorization by the permit to make and sell items under the terms of §§ 13-3-2-1 et seq.

(B) The types of handcrafted items that the applicant makes and the location at which the applicant makes such items.

(C) A description of the types of handcrafted items that the applicant intends to offer for sale.

(D) The State Gross Receipts Tax identification number and proof that the applicant is in compliance with Chapter 13, Article 1, Business Registration.

(E) Two current passport size photographs of the applicant and all members of the craft unit who will be vending. The photographs shall not be supplied until the applicant has been selected for issuance of the permit.

(F) A document indicating the maker's mark of each individual member of a craft unit or of the individual vendor. There is no requirement that the maker's mark be registered with any other agency.

(G) A declaration under penalty of perjury that the applicant is 18 years of age or older.

(H) A declaration that the applicant agrees to grant to the Old Town Portal Manager, or the designee, the right to enter the studio, place of business or place of manufacture of the vendor and the vendor's craft unit to insure compliance with the provisions of §§ 13-3-2-1 et seq. Any visitation pursuant to this grant of authority will be done between the hours of 8:00 a.m. and 5:00 p.m. Every attempt to give reasonable notice to the vendor will be made. In the event the Old Town Portal Manager or designee deem that it is necessary to make a visit without notice, they shall certify in writing the need for such visit and reasons why no notice should be given.

(I) A declaration that the applicant, if and when the applicant becomes a vendor, agrees to indemnify and hold harmless the city, its officers and employees from any and all damages or injury to persons or property proximately caused by the act or neglect of the vendor or by hazardous or negligent conditions maintained at the solicitations location.

('74 Code, § 10-2-9) (Ord. 20-1991)

### **§ 13-3-2-10 PERMIT FEE.**

Upon submitting the application for a permit, the applicant shall pay the Treasurer of the city a nonrefundable fee of \$25. Before issuance of the permit, the applicant shall pay the Treasurer an additional \$100.

('74 Code, § 10-2-10) (Ord. 20-1991)

### **§ 13-3-2-11 PROCEDURE FOR AUTHORIZATION OR DENIAL OF PERMIT.**

The Mayor shall, within 45 calendar days of receipt of the application for permit, grant or deny the permit. If the Mayor affirmatively determines, upon inquiry and examination, that the requirements have been met, he shall grant the permit. If the Mayor determines, upon inquiry and examination, that any of the requirements have not been met, the Mayor shall notify the applicant that the application for the permit has been denied and shall state the findings of fact upon which the denial is based. The denial of a permit may be appealed to a City Hearing Officer by filing a written notice of appeal with the City Clerk within ten days of the denial's issuance; the Hearing Officer shall, within 14 days of the filing of the notice of appeal, hold a hearing and recommend findings and action to the Mayor; the Mayor's final action shall be within five days of the receipt of the recommended findings and action. A nonrefundable hearing fee of \$50.00 shall accompany each request for hearing by the City Hearing Officer that is filed pursuant to this Section.

('74 Code, § 10-2-11) (Ord. 20-1991; Am. Ord. 38-2002)

### **§ 13-3-2-12 OLD TOWN PORTAL MARKET.**

Old Town Solicitations Permits will be granted to allow persons to solicit in the Old Town HPO 5 subject to the following conditions and subject to any necessary rules and regulations adopted by the Mayor to implement §§ 13-3-2-1 et seq.:

(A) Vendors shall be allowed to solicit within the Old Town HPO 5 only on the porch, on the sidewalk along the east side of San Felipe Street, NW, from the line perpendicular to San Felipe Street taken from the midpoint of South Plaza Street, NW, to 16 feet south of the north end of the porch. This area shall be divided into 15 equal spaces, which shall be generally five feet in width and six feet in depth measured from the building wall. The spaces shall have provision for access and shall be divided in such a way to ensure movement and safety. The Old Town Portal Manager shall administratively determine and delineate the exact location of the spaces to insure that soliciting does not obstruct the view from the two large windows of the La Placita Restaurant and to insure movement and safety between the vendors. All spaces will be numbered from 1 through 15 beginning at the south end of the designated area.

(B) The spaces shall be available each day to vendors. The Old Town Portal Manager will assign spaces for each day to those vendors present at the time of assignment. Assignment shall be made once a week for each day of the subsequent week for a seven-day period by such methods established by regulation of the Mayor that will insure a fair and equitable assignment of spaces. Each vendor who is assigned a space shall pay a daily user fee of \$12. No vendor may occupy more than one space, whether or not there are spaces otherwise unoccupied, and only one person shall be permitted to occupy one space. If a vendor has not filled his or her assigned space on a given day, the Old Town Portal Manager may reassign the space for the balance of that day and shall receive the daily user fee from the vendor reassigned to the space. The reassignment procedures will be established by regulation of the Mayor.

(C) A vendor shall sell only handcrafted items handcrafted by that vendor or his or her craft unit, and each item to be sold shall contain the maker's mark of that vendor or member of a craft unit. Items such as jewelry, shall be labeled for content if

a significant part of the value of the item relates to its content; for example, silver should be labeled as sterling silver, nickel silver and the like, as appropriate, stone should be labeled as turquoise, reconstituted turquoise and the like, as appropriate. Vendors shall comply with the provisions of all laws of the state and of the United States applicable to the sales of the items they are vending.

(D) For each transaction, the vendor shall issue a sales receipt showing the vendor's permit number.

(E) The Old Town Portal Manager may designate a person to make site visits to the studio, the place of business or place of manufacture, of the vendor and the vendor's craft unit to insure compliance with the provisions of §§ 13-3-2-1 et seq. The Old Town Portal Manager and the designee shall from time to time inspect the vendor's operation on the Old Town Portal Market.

(F) Vendors shall attempt to solicit in the Old Town Portal Market in at least one weekly lottery in each four-week period.

(G) Permits will be issued for a one year period starting July 1, 1991. All permits issued after July 1 of any year will expire on the following June 30.

(H) The Mayor shall have the authority to issue warnings and citations and initiate complaints, as appropriate for violations of §§ 13-3-2-1 et seq., its implementing rules and regulations, or other city ordinances.

('74 Code, § 10-2-12) (Ord. 20-1991; Am. Ord. 14-2002; Am. Ord. 2019-023)

### **§ 13-3-2-13 HOURS OF SOLICITATION.**

Solicitations conducted under the Old Town Solicitations Permits are permitted only between the hours of 9:00 a.m. and 9:00 p.m.

('74 Code, § 10-2-13) (Ord. 20-1991)

### **§ 13-3-2-14 VISIBILITY OF PERMIT; NONTRANSFERABILITY; DURATION; RENEWALS; MAXIMUM NUMBER OF PERMITS HELD.**

(A) Any permit issued pursuant to §§13-3-2-1 et seq. shall include the name and a photograph of the vendor. Permits shall be visible to the public at all times when the vendor is soliciting.

(B) All permits shall be nontransferable.

(C) Permits shall be valid for a maximum of one year.

(D) Permits shall not automatically be renewed. Persons who hold permits may submit applications for additional one year terms.

(E) No person may hold or be issued more than one valid Old Town Solicitations Permit in any one year period.

('74 Code, § 10-2-14) (Ord. 20-1991)

### **§ 13-3-2-15 PROHIBITED ACTIVITIES.**

(A) No permit holder under the Portal in the Old Town Portal Market shall:

(1) Sell items that are not hand-crafted;

(2) Sell items without a permit;

(3) Sell items not made by that person or his or her craft unit;

(4) Post a sign on the building along the designated area nor shall any item be leaned against or affixed to the adjacent building, including any of the windows;

(5) Bring alcoholic beverages, or controlled dangerous substances, drink or use the same at any time, nor shall any person be under the influence of intoxicating liquor or a controlled dangerous substance;

(6) Engage in violent, abusive, indecent, profane, boisterous, unreasonably loud or otherwise disorderly conduct which tends to disturb the peace;

(7) Maliciously disturb, or threaten, or in an insolent manner, intentionally touch or apply force to any person;

(8) Obstruct any portion of the entries, passages, vestibules and ways of access in the right-of-way;

(9) Park his or her vehicle in front of residential properties in the Old Town HPO 5;

(10) Fail to maintain his or her solicitations location in a clean and hazard free condition;

(11) Exchange or otherwise assign spaces that have been assigned to that vendor or craft unit for any given day. Reassignments will only be made pursuant to § 13-3-2-12(B).

(B) Notwithstanding any other provision in §§ 13-3-2-1 et seq., if the Mayor has a reasonable suspicion that a vendor is engaged in one of the activities prohibited by division (A) of this section, the Mayor may require the vendor to cease

soliciting for that day and leave the Old Town Portal Market. If the Mayor believes that such conduct by the vendor is of a serious enough nature that the vendor's permit should be suspended or revoked, the procedure set out in § 13-3-2-98 for the suspension or revocation of a permit shall apply.

('74 Code, § 10-2-16) (Ord. 20-1991; Am. Ord. 36-1993; Am. Ord. 2019-023)

#### **§ 13-3-2-16 SPECIAL EVENTS.**

The provisions of §§ 13-3-2-1 et seq. regulating soliciting within the Old Town HPO 5 shall not apply to activities in conjunction with a special event.

('74 Code, § 10-2-17) (Ord. 20-1991; Am. Ord. 2019-023)

#### **§ 13-3-2-17 PERMITS NOT ENDORSEMENT.**

Permits issued under §§ 13-3-2-1 et seq. shall not be deemed to constitute endorsement by the city of Albuquerque of any solicitations made hereunder and no person shall claim or infer directly or indirectly any such endorsement by reason of its permit.

('74 Code, § 10-2-18) (Ord. 20-1991)

#### **§ 13-3-2-18 ADMINISTRATION OF AND APPLICABILITY OF OTHER LAW.**

(A) The Mayor shall adopt such rules and regulations as necessary for the safe and equitable administration of §§ 13-3-2-1 et seq. The issuance of a permit does not constitute a waiver of any requirement or provision contained in any ordinance of the city or state or federal law.

(B) In the event that the provisions of §§ 13-3-2-1 et seq. are in conflict with the provisions of §§ 13-3-1-1 et seq. of this article, the provisions of §§ 13-3-2-1 et seq. shall prevail.

('74 Code, § 10-2-19) (Ord. 20-1991)

#### **§ 13-3-2-98 VIOLATIONS; SUSPENSION AND REVOCATION OF PERMIT; HEARING.**

(A) If the Mayor has a reasonable suspicion that a vendor has:

- (1) Violated any provision of §§ 13-3-2-1 et seq. or of regulations applicable to vendors;
- (2) Made fraudulent, misrepresentative, or false statements in the application for the permit; or

(3) Conducted solicitations in an unlawful manner or in such a way as to constitute a menace to the health or safety of the public; or in a manner that is not conducive to the overall welfare and promotion of the Old Town HPO 5, the Mayor shall give the vendor written notice by certified mail, return receipt requested, that the Mayor intends to proceed to suspend or revoke the permit unless the vendor requests a hearing by a City Hearing Officer. Such request shall be made in writing and filed in the office of the City Clerk within 14 calendar days from the day that the vendor receives the notice of the proposed action. The notice shall contain a statement of the facts upon which the Mayor has acted. A suspension of a permit shall not exceed 90 calendar days.

(B) If a vendor fails to request a hearing pursuant to division (A) above, the Mayor shall proceed to suspend or revoke the permit. The written determination by the Mayor to suspend or revoke the permit shall be filed in the office of the City Clerk and sent by certified mail, return receipt requested, to the vendor.

(C) When a hearing is requested pursuant to division (A) above, the Hearing Officer shall send written notice by certified mail, return receipt requested, to the vendor of the time and place of the hearing. The hearing shall be held no sooner than five calendar days or later than 60 calendar days after the vendor receives notice of the hearing unless the vendor agrees to an extended time or the Hearing Officer continues the hearing. At the hearing the vendor shall have the right to present evidence as to the alleged facts upon which the Mayor based the determination to suspend or revoke the permit and any other facts which may aid the Hearing Officer in determining whether §§ 13-3-2-1 et seq. has been violated. If, after such hearing, the Hearing Officer finds that any provision of said sections have been violated, he may suspend or revoke the permit and cause to be filed, within ten calendar days after the hearing, in the office of the City Clerk for public inspection, and served upon the vendor and all interested parties participating in the hearing, a written statement of the facts upon which such finding is based. If such finding is based upon a failure to comply with the standards on handcrafted items, the permit shall be revoked and the permittee shall not be allowed to apply for a new permit. If, after such hearing, the Hearing Officer finds that any provision of §§ 13-3-2-1 et seq. has not been violated he shall, within ten calendar days after the hearing, give to the vendor a written statement that no violation was found to have been committed.

(D) Any person whose permit has been revoked shall not be permitted to apply for another permit for one year after the filing of the written statement revoking the permit; provided, that any person who has had a permit revoked for violating the provisions of §§ 13-3-2-1 et seq. relative to the production and origin of items sold shall not be permitted to apply for another permit for a period of ten years from the date of such revocation.

('74 Code, § 10-2-15) (Ord. 20-1991; Am. Ord. 2019-023)

#### **§ 13-3-2-99 PENALTY.**



Every person convicted of a violation of any provision of §§13-3-2-1 et seq. shall be guilty of a misdemeanor and shall be subject to the penalty provisions set forth in § 1-1-99 of this code of ordinances. Every day such violation is committed or permitted to continue shall constitute a separate offense and shall be punishable as such hereunder.

('74 Code, § 10-2-20) (Ord. 20-1991)

## **PART 3: ADVANCE SALE OF MEMBERSHIPS**

### **§ 13-3-3-1 AUTHORITY.**

Sections 13-3-3-1 et seq. is enacted pursuant to Section 3-38-1 NMSA 1978, Article I of the Charter of the City of Albuquerque, and Article X, Section 6 of the Constitution of New Mexico.

('74 Code, § 10-5-1) (Ord. 102-1981)

### **§ 13-3-3-2 FINDINGS AND PURPOSE.**

The City Council finds that residents of the city are frequently solicited to buy membership or otherwise pay towards rights in organizations such as health spas, dance clubs and travel clubs that are to be established in the city in the future with no guarantee of refunds should such organizations not come into existence according to the promises or agreements under which the sponsor of the organization solicits the money. Sections 13-3-3-1 et seq. is intended to protect members of the general public from the risks of such failure to perform.

('74 Code, § 10-5-2) (Ord. 102-1981)

### **§ 13-3-3-3 DEFINITION.**

For the purpose of §§ 13-3-3-1 et seq., the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**FUTURE ESTABLISHMENT.** A person or organization seeking to begin operation providing services for remuneration sometime in the future and which sells memberships or other rights to the service of the establishment prior to such service being available.

**MAYOR.** The Mayor or his designated representative.

**OWNER.** The owner(s), manager(s), or agent(s) of any future establishment.

**SUBSCRIBER.** Anyone who purchases membership or other rights in a future establishment.

('74 Code, § 10-5-3) (Ord. 102-1981)

### **§ 13-3-3-4 LICENSE FEE.**

Before a future establishment begins to sell memberships or other rights to services in the establishment, the owner shall pay to the city a nonrefundable license fee of \$150. The license fee shall be accompanied by such information as the Mayor shall by regulation require, including but not limited to the general background of the future establishment with disclosure of past litigation involving the owners in the future establishment, the nature of the services to be provided by the future establishment, the full range and schedule of membership and other rights to services to be presold, scheduled opening date and planned locations of the future establishment, and a subscriber warranty as set out in § 13-3-3-5. The Mayor shall have the right to inspect the books and records of the future establishments. Future establishments shall keep accurate books and records reflecting sales of future services and shall report such information to the Mayor as he may periodically require to insure that such sales do not exceed the guarantee amount as set out in § 13-3-3-5.

('74 Code, § 10-5-4) (Ord. 102-1981)

### **§ 13-3-3-5 SUBSCRIBER WARRANTY.**

As part of the application, the owner shall certify to the Mayor a warranty to subscribers which guarantees that subscribers will be refunded dollar for dollar in the event and to the extent the services promised in exchange for payment received from the subscribers are not delivered. The owner may not sell memberships or other rights in the future establishment in excess of the guarantee amount established. The warranty may be in the form of a performance bond, escrow account, or any other arrangement satisfactory to the Mayor. The owner shall not be released from the obligation of this warranty until one year after the commencement of full operation of all services as advertised and paid for by subscribers prior to opening. Any subscriber aggrieved by a future establishment because of a failure of a future establishment to deliver services paid for by the subscriber may bring an action on the subscriber warranty for recovery, which action shall be in addition to any other rights or remedies the subscriber might have against the owner and/or the future establishment.

('74 Code, § 10-5-5) (Ord. 102-1981)

### **§ 13-3-3-6 DENIAL OR REVOCATION OF LICENSE-RIGHT OF HEARING.**

(A) If the Mayor determines that the owner of a future establishment fails to meet any of the requirements for the license he may deny the application therefor; or if the Mayor determines that the owner of a future establishment has violated the terms under which a license has been granted he may suspend or revoke the same.



(B) The owner shall be given notice of such denial, suspension, or revocation in writing by personal service or certified mail, addressed to the place of business listed on the application. Such notice shall contain a statement of the reasons for and/or conditions of the denial, suspension, or revocation, the date when the denial, suspension, or revocation shall take effect, which shall not be less than ten working days from the date the notice was mailed or served, and notify the permit holder that he may appeal the decision by filing with the Mayor a written request for hearing, which request must be received by the Mayor on or before the effective date of such denial, suspension or revocation. All requests for hearings shall set forth briefly the objections to the Mayor's actions.

(C) In the event a owner is preselling rights in a future establishment without a license and the Mayor has reasonable cause to believe the license is required, the Mayor shall notify the owner by personal service or certified mail to cease and desist. Such notice shall contain the effective date of such order, which shall not be less than ten working days from the date the notice was mailed or served, and notify the owner that he may appeal the decision by filing with the Mayor a written request for hearing, which must be received by the Mayor on or before the effective date of the cease and desist order.

(D) The hearing shall be conducted according to standard rules and procedures used in all such city hearings, and the decision of the Hearing Officer shall be final.

(E) In the event a hearing is not timely requested, or the action of the Mayor to deny, suspend, or revoke a license, or cease and desist is affirmed, and this action is not complied with, the Mayor may take appropriate legal action to enforce the same.

('74 Code, § 10-5-6) (Ord. 102-1981)

### **§ 13-3-3-99 PENALTY.**

Any person who violates any provision of §§13-3-3-1 et seq. shall be subject to the general penalty provisions of this code set forth in § 1-1-99.

('74 Code, § 10-5-7) (Ord. 102-1981)